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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. —

BRUCE G. BARBER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, SAN FRANCISCO, CALIFORNIA, PETITIONER

v.

PEDRO GONZALES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals from the Ninth Circuit, which directed that the judgment of the district court be reversed and the cause remanded with directions to order the respondent's release from custody.

OPINIONS BELOW

The majority and dissenting opinions below (R. 25-35) have not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered September 15, 1953 (R. 36). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a Filipino who entered the United States prior to the enactment of the Philippine Independence Act of 1934, but who was twice convicted of crimes involving moral turpitude after enactment of that statute, may be deported under Section 19 of the Immigration Act of 1917.

STATUTES INVOLVED

Section 19(a) of the Immigration Act of February 5, 1917, 39 Stat. 889, as amended, formerly 8 U.S.C. 155(a), provides in pertinent part:

* * * except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon the warrant of the Attorney General, be taken into custody and deported * * *.

The Act of March 24, 1934, known as the "Philippine Independence Act", 48 Stat. 456, c. 84, for-

merly 48 U.S.C. 1232 *et seq.*, provided in pertinent part:

Sec. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty.

* * * *

Sec. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

STATEMENT

Respondent, a native of the Philippine Islands, entered the United States in 1930 at the age of seventeen (R. 9, 14). In 1941, he was convicted in the Superior Court of the State of California of the crime of assault with a deadly weapon and

was sentenced to imprisonment for one year (R. 9, 15). In 1950, he was convicted of second degree burglary in the state of Washington and was sentenced under the indeterminate sentence law of that state for a term, the minimum of which was to be set by the Parole Board, and the maximum of which was fifteen years. He served two years for said offense (R. 10, 15).

In July, 1951, after a hearing, respondent was ordered deported under Section 19 of the Immigration Act of 1917 (*supra*, p. 2) as an alien who after entry had been sentenced more than once to imprisonment for terms of one year or more for crimes involving moral turpitude (R. 10, 14, 15). After he was taken into custody for deportation, he filed a petition for a writ of habeas corpus, subsequently amended (R. 8-13), in which he claimed to be a national of the United States and also attacked the validity of the deportation order on the grounds that (1) the crime of which he was convicted in California was not one involving moral turpitude, and (2) he was not within the intent of Section 19 of the Immigration Act of 1917 since he was a national of the United States at the time the California crime was committed. The district court dismissed the petition (R. 18).¹

On appeal, the Court of Appeals for the Ninth Circuit reversed the order of the district court (R. 36), one judge dissenting (R. 29-35). The

¹ A previous petition for habeas corpus brought in the United States District Court for the Western District of Washington had also been dismissed (R. 11, 15).

court rejected three of petitioner's contentions— (1) that the crime of assault with a deadly weapon was not a crime involving moral turpitude; (2) that petitioner remained a national of the United States after Philippine independence in 1946; (3) that Section 19 was inapplicable to his case because he was a national of the United States when the first offense was committed (R. 25-27).² A majority of the court below held, however, that petitioner was not deportable under Section 19 of the Immigration Act of 1917 because, having entered in 1930 as a national of the United States, he had made no "entry" within the terms of that section providing for deportation of aliens convicted of two crimes involving moral turpitude "committed at any time after entry" (R. 27-29). This holding is in accord with the same court's previous ruling that a Filipino who came to the United States before the Independence Act of 1934 had not entered the United States and was therefore not deportable under Section 22 of the Internal Security Act of 1950, a ruling which was one of alternative grounds of the court's decision in *Mangaoang v. Boyd*, 205 F.2d 553, petition for certiorari pending No. 345, this Term.

² With respect to this contention, the Court pointed out that under Section 8(a) (1) of the Philippine Independence Act of 1934 (*supra*, p. 3), Filipino citizens who were nationals of the United States were, for the purposes of laws relating to immigration, exclusion or expulsion, to be "considered as if they were aliens," and that petitioner's convictions for crimes occurred after the effective date of that act.

REASONS FOR GRANTING THE WRIT

In the petition for a writ of certiorari filed on behalf of the government in the *Mangaoang* case, No. 345, this Term, it was suggested that that decision, although directly involving only Section 22 of the Internal Security Act of 1950, would probably affect the status of Filipino non-citizens who committed crimes or other acts specified as grounds for deportation, and that, in view of the large number of Filipinos in the United States, the decision would have far-reaching impact. The decision in the instant case proves the correctness of that prophecy as to criminal acts. Moreover, there are already at least two cases in the district courts and three cases before the Court of Appeals for the Ninth Circuit which involve issues presented by the *Mangaoang* and the instant case. Indeed, as was pointed out in the *Mangaoang* petition, the decisions involve more than the status of Filipinos. Under the definition given to the term "entry" in these cases, any person who was not an alien at the time of his coming into the United States would not be deportable under any section of the immigration laws dealing, as many of them do, with acts committed after entry.

We submit that the dissenting judge below is clearly correct in his view that, as to those acts which are made a basis of deportation "at any time after entry," the " 'entry' is not, in any real sense, an element of the deportable conduct, any more than is the birth of an accused an element of the crime with which he is charged" (R. 34-35).

"After entry" in the context of "any time after entry" seems clearly designed to distinguish acts occurring in the United States from acts occurring before the alien has physically come into the United States. But there is no reason to believe that it is within the intent of the statute that, where an alien has been physically present in the United States for a substantial period of time and while here has committed acts, such as two crimes involving moral turpitude, which Congress has deemed serious enough to warrant deportation "at any time", he should obtain immunity from deportation merely because he was not an alien when he first came to the United States. Petitioner is an alien who while in the United States has been twice convicted of crimes involving moral turpitude. As such, we submit, he is clearly of the class of aliens deportable under Section 19 of the Act of 1917.

As pointed out in the petition for certiorari in the *Mangaoang* case, the Court of Appeals for the Ninth Circuit had in earlier decisions construed the words "after entry" in the context of "at any time after entry" to mean "while such alien is in the United States." *United States v. Yamamoto*, 240 Fed. 390, 391. *United States v. Sui Joy*, 240 Fed. 392, 393. The court's reasoning and conclusions in these earlier cases is, we submit, more consonant with the purpose of the expulsion statute than is the instant decision.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

ROBERT L. STERN,
Acting Solicitor General.

OCTOBER, 1953.